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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,067	07/16/2002	Enrique Martinez-Force	ARNO118345	4298

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

EXAMINER	
JIANG, SHAOJIA A	

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/009,067	MARTINEZ-FORCE ET AL.	
	Examiner	Art Unit	
	Shaojia A Jiang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This Office Action is a response to Applicant's amendment and response filed on March 18, 2004 wherein the instant specification has been amended as to page 1 "In the Cross-Reference"; claims 1-12 have been amended.

Currently, claims 1-12 are pending in this application.

Claims 1-12 as amended now are examined on the merits herein.

Applicant's amendment (amending claims 1-12) filed March 18, 2004 with respect to the rejections made under 35 U.S.C. 112 second paragraph and under 35 U.S.C. 101 for the claimed recitation of a "use" in claims 1-5 has been fully considered and found persuasive to remove the rejection since the recitation of a "use" have been removed. Therefore, the said rejection is withdrawn.

Applicant's amendment filed on December 18, 2002 in Paper No. 7 with respect to the rejection of claims 1-12 made under 35 U.S.C. 112 second paragraph for the use of the indefinite recitations, i.e., "TNF-α" in claims 1, 11 and 12 of record stated in the Office Action dated December 18, 2001 have been fully considered and found persuasive to remove the rejection as to claim 21-22 since the term "rapidly" has been deleted from the claims. Therefore, the said rejection is withdrawn.

Moreover, Applicant's amendment removing "TAG" and "sn" with respect to the rejection made under 35 U.S.C. 112 second paragraph for use of trademark/trade name

in claims 1-12 have been fully considered and found persuasive to remove the rejection.

Therefore, the said rejection is withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,388,113 for the same reasons of record stated in the Office Action dated December 15, 2003.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is drawn to an oil composition comprising the same ingredients in the same amounts as the instant claims.

The claims of the instant application is drawn to drawn to a food product or cosmetic product comprising the same ingredients in the same amounts. The recitation "oil" in the patent reads on "food product" or "cosmetic product" as claimed herein.

Thus, the instant claims 6-12 are seen to be anticipated by the claims 1-6 of U.S. Patent No. 6,388,113.

Claims 6-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 7, and 11 of U.S. Patent No. 6,348,610 for the same reasons of record stated in the Office Action dated December 15, 2003.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is drawn to an oil composition comprising the same ingredients in the amounts in the ranges overlapping with the instant claims.

The claims of the instant application is drawn to drawn to a food product or cosmetic product comprising the same ingredients in the amounts within the patent claims. The recitation "oil" in the patent reads on "food product" or "cosmetic product" as claimed herein.

Thus, the instant claims 6-12 are seen to be obvious over the claims 1, 4, 7, and 11 of U.S. Patent No. 6,348,610.

Claims 6-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7-8, and 11-12 of U.S. Patent No. 6,486,336 for the same reasons of record stated in the Office Action dated December 15, 2003.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is drawn to an oil composition comprising the same ingredients in the amounts in the ranges overlapping with the instant claims.

The claims of the instant application is drawn to drawn to a food product or cosmetic product comprising the same ingredients in the amounts within the patent claims. The recitation "oil" in the patent reads on "food product" or "cosmetic product" as claimed herein.

Thus, the instant claims 6-12 are seen to be obvious over the claims 1, 7-8, and 11-12 of U.S. Patent No. 6,486,336.

With respect to these obviousness-type double patenting rejections of record in the previous Office Action, note that Applicant states in the remarks filed March 18, 2004 that "[A] terminal disclaimer will be filed upon notification of allowable subject matter. Applicants respectfully request these grounds of rejection be held in abeyance pending resolution of the remaining issues."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osorio et al. (WO 95/20313, of record) in view of Alvarez-Ortega et al. (O10, of record).

Osorio et al. discloses the sunflower oil compositions therein comprising oleic acid (18:1) in between 3-85% by weight and stearic acid (18:0) in 10-19%, 19.1-35%, or 29-54% by weight and a method of obtaining these compositions by treating parent seeds with a mutagenic agent during a period of time and in a concentration sufficient to induce one or more mutations in the generic trait that involved in stearic acid biosynthesis resulting in an increased production of stearic acid, and other particular method steps therein (see abstract, claims 1-14). Osorio et al. also discloses that the sunflower oils are obtained from the mutated seeds therein(see page 3-4). Osorio et al. also discloses that sunflower oil is well known to be used in food industry (see page 2 lines 21-33).

Osorio et al. does not expressly disclose the amounts of the saturated fatty acid in the 2 position of triacylglycerol are 10% by weight at maximum.

Alvarez-Ortega et al. discloses that the analysis showed or found that the amounts of the saturated fatty acid in the 2 position of triacylglycerol of the same sunflower mutants as disclosed in Osorio et al. are less 10% by weight (see the last four lines of abstract, Table 3 and the left column of page 836). Hence, the same sunflower mutants as disclosed in Osorio et al. intrinsically or inherently contain less 10% by weight of the saturated fatty acid in the 2 position of triacylglycerol. Alvarez-Ortega et al. teaches that the increase of the saturated fatty acids at sn-2 position of triacylglycerol increases its atherogenic effect (see the left column of page 833).

It is noted that Applicant also teaches in the specification herein that "it was surprisingly **found** that in said oil a maximum of 10 wt% of the fatty acid groups in the sn-2 position to the TAG molecules are saturated fatty acid groups" (see page 6 line 30-33 of the specification herein, emphasis added).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the sunflower oil compositions comprising oleic acid (18:1) in more than 40% by weight and stearic acid (18:0) in more than 12 %, with the amounts of the saturated fatty acid in the 2 position of triacylglycerol at maximum 10% by weight in a food product or cosmetic product.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ the sunflower oil compositions comprising oleic acid (18:1) in more than 40% by weight and stearic acid (18:0) in more than 12 %, with the amounts of the saturated fatty acid in the 2 position of triacylglycerol at maximum 10% by weight in a food product or cosmetic product, since the instant claimed sunflower oil compositions comprising oleic acid (18:1) and stearic acid (18:0), in amounts within the range of Osorio et al., and the method of obtaining such compositions, are known in the art according to Osorio et al.

Most importantly, the same sunflower mutants as disclosed in Osorio et al. is known to intrinsically or inherently contain less 10% by weight of the saturated fatty acid in the 2 position of triacylglycerol according to the analysis disclosed by Alvarez-Ortega et al. Alvarez-Ortega et al. teaches that the increase of the saturated fatty acids at sn-2

position of triacylglycerol increases its atherogenic effect. Further, sunflower oils are well known to be used in a food product or cosmetic product.

Therefore, one of ordinary skill in the art would have found it obvious to employ the sunflower oil compositions of Osorio et al. because these compositions comprising or inherently containing all instant fatty acids in amounts and the method of obtaining them have been taught by Osorio et al.

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art.

Applicant's remarks filed March 18, 2004 with respect to this rejection made under 35 U.S.C. 103(a) of record in the previous Office Action have been fully considered but are not deemed persuasive as to the nonobviousness of the claimed invention over the prior art for the reasons discussed above. These remarks are believed to be adequately addressed by the obvious rejection presented above.

Additionally, the record contains no clear and convincing evidence of nonobviousness or unexpected results for the combination method herein over the prior art. In this regard, it is noted that the specification provides no side-by-side comparison with the closest prior art in support of nonobviousness for the instant claimed invention over the prior art.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (571)272-0627. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9307.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Anna Jiang, Ph.D.
Patent Examiner, AU 1617
June 8, 2004

SHAOJIA ANNA JIANG
PATENT EXAMINER